No. 643.

# Supreme Court of the United States.

OCTOBER TERM, 1939.

IN THE MATTER OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, DEBTOR.

BENTLEY W. WARREN AND CHARLES W. MULCAHY, AS THE TRUSTEES OF THE PROPERTY OF BOSTON AND PROVIDENCE RAILROAD CORPORATION,

*v.*

HOWARD S. PALMER ET ALS., AS THE TRUSTEES OF THE PROPERTY OF THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY AND OLD COLONY RAILROAD COMPANY.

## SUPPLEMENT TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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## SUPPLEMENT TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

In addition to the authorities cited in the petition, counsel for the petitioners desire to direct the attention of the Court to the decision of the Circuit Court of Appeals for the Eighth Circuit in *Thompson* v. *Terminal Shares, Inc.*, 104 F. (2d) 1, 9, in which case this Court denied petitions

for writs of certiorari, October 9, 1939, Nos. 218, 219, October Term, 1939.

The *Terminal Shares* case, like the present case, involved the jurisdiction of a bankruptcy court under Section 77 of the Bankruptcy Act. The trustee of a railroad in bankruptcy in the District Court for the Eastern District of Missouri started a proceeding in that court to recover a sum of money which had been paid under a contract, and to establish and foreclose an equitable lien on certain securities. None of the defendants was present or served with process in the Eastern District of Missouri, and the securities upon which the lien was claimed were likewise outside of the District. Upon motion of the defendants, the District Court held that it was without jurisdiction. This decision was affirmed by the Circuit Court of Appeals.

The *Terminal Shares* case and the present case thus involve the same fundamental question of the jurisdiction of a court of bankruptcy under Section 77 to adjudicate rights between the bankrupt estate and persons outside of the judicial district in property located outside of the district, and to impose a lien upon such property in favor of the bankrupt estate.

There are, it is true, factual distinctions between the two cases. These distinctions, however, do not affect the essential similarity of the jurisdictional questions involved. Thus in the *Terminal Shares* case it may be pointed out that the bankruptcy trustees had neither title to nor possession of any interest in the property upon which they sought to have the lien imposed. If the trustee ever had title in that case, it terminated upon the repudiation of the contract, just as in the present case the leasehold interest terminated upon rejection of the Boston and Providence lease. In the present case, moreover, it is not disputed that title to and the reversionary interest in the Boston and Providence property has at all times been either in that corporation or in

the petitioners as trustees. This title and reversionary interest is the property interest which is sought to be subjected to a lien, and is no more in the possession of the Connecticut court than was the property in the *Terminal Shares* case in the possession of that bankruptcy court.

Similarly, it appears that the claim which was the subject of the *Terminal Shares* case existed at the time of the bankruptcy and was therefore clearly a part of the estate over which the bankruptcy court got jurisdiction under Section 77(a). In this case, the claim arose after the New Haven bankruptcy. To the extent that this difference is material, it should operate against the jurisdiction of the Connecticut court over the claim and lien in the present case. Here the claim was never property of the Debtor and thus not within Section 77(a).

It is clear that the opinion below and the opinion of the *Terminal Shares* case exhibit many points of inconsistency both in argument and approach. For example, the court below has supported the jurisdiction of the Connecticut court by saying that the lien claimed by the New Haven and Old Colony Trustees upon the property of the Boston and Providence is property of the New Haven and Old Colony and thus within the "exclusive jurisdiction" of the Connecticut court under Section 77(a), despite the fact that the very existence of the lien is disputed. In the *Terminal Shares* case there was likewise a claim of lien and an argument that this claim was property of the debtor and thus within the jurisdiction of the District Court of Eastern Missouri. But this contention was rejected. There is here a considerable element of conflict.

Turning to another point, the court in the *Terminal Shares* case said (104 F. (2d) at 9): "To sustain the lower court's jurisdiction of this suit would do violence to the general policy of Congress that persons shall not be subjected to civil suits except in the districts of which they are inhabi-

tants." The court below, on the other hand, has taken an opposite view of the jurisdiction of the Connecticut court, giving to it a disproportionately broad effect while giving no practical effect to the "exclusive jurisdiction" over the property of the Boston and Providence granted to the Massachusetts court.

The existence of such divergent opinions and conflicting results in the lower courts as the *Terminal Shares* opinion and the opinion below, together with the opinion in *Magnolia Petroleum Company* v. *Thompson*, referred to in the petition, can lead only to uncertainty and confusion in the administration of Section 77 of the Bankruptcy Act, and will result in a lack of uniformity among the Circuits. The extent of this confusion is rather heightened than diminished by the factual differences between the cases. It can be eliminated only by a decision of this Court.

For this further reason, therefore, it is respectfully submitted that the petition should be granted.

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January, 1940.